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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9 UNITED STATES OF AMERICA,
10 Plaintiff,
11 v.
12 JOSEPH ROAQUE,
13 Defendant.

Case No. 2:18-cr-0218-RFB-VCF

**UNOPPOSED MOTION TO
CORRECT JUDGMENT UNDER
FED. R. CRIM. PROC. 36¹**

14
15 **I. INTRODUCTION**

16 Joseph Roaque, through counsel, requests this Court correct an error in the February
17 2020 judgment (ECF No. 86).² As currently written, the judgment imposes a sentence of:

18
19 One hundred, forty (140) months as to Count One; to run
20 concurrent with Nevada State case #C326055.

21 Under the terms of the parties' plea agreement, and consistent with what was
22 discussed and ordered at Mr. Roaque's February 6, 2020, sentencing, Mr. Roaque requests the

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24 ¹ This motion is timely filed—there is no deadline. Undersigned counsel communicated
25 with AUSA Susan Cushman regarding the instant motion. Ms. Cushman indicated the
government did not have any objections to this request to correct the judgment.

26 ² On November 5, 2020, Mr. Roaque mailed a letter to this Court requesting clarification
on his sentence. ECF No. 108. Undersigned counsel has been in contact with Mr. Roaque on
multiple occasions to update him, explain his sentencing situation, and discuss the filing of this
motion.

judgment be corrected to include his second then-pending Nevada state case, so that the sentence reads:

One hundred, forty (140) months as to Count One; to run concurrent with Nevada State case #C326055 and case #C329227-5.

II. ARGUMENT

Under Federal Rule of Criminal Procedure 36, “[a]fter giving any notice it considers appropriate, the court may at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission.”

On July 11, 2019, Mr. Roaque pleaded guilty to Count One of the indictment, Conspiracy to Distribute a Controlled Substance³, pursuant to a plea agreement.⁴ Under the terms of the plea agreement, the parties agreed that the government would recommend the federal sentence run concurrent with any state sentence imposed in Case Nos. C-17-326055-1 and C-18-329227-5.⁵

VIII. POSITIONS REGARDING SENTENCE

The United States will recommend that the Court sentence the defendant to sentence within the advisory guideline range as determined by the Court unless the defendant commits any act that could result in a loss of the downward adjustment for acceptance of responsibility. The defendant may argue for a downward adjustment to 120 months pursuant to 18 U.S.C. § 3553 or USSG § 4A1.3(b)(1). The United States agrees to recommend that the sentence imposed in this case will run concurrent with any state sentence imposed in Case No. C-17-326055-1 and C-18-329227-5. The defendant acknowledges that the Court does not have to follow the

³ In violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(A)(viii).

⁴ ECF No. 64.

⁵ ECF No. 63.

1 Mr. Roaque filed a sentencing memorandum noting the same.⁶

2 On February 6, 2020, Mr. Roaque appeared before this Court for his sentencing.⁷ At
3 Mr. Roaque's sentencing, in accordance with the plea agreement, defense counsel requested
4 this Court order the federal sentence to run concurrent to Mr. Roaque's state case.⁸ During
5 argument, defense counsel inadvertently mentioned only one of Mr. Roaque's pending state
6 cases.⁹ Neither the government nor defense counsel raised any reason to deviate from what
7 was intended under the terms of the plea agreement or what was requested in defense
8 counsel's sentencing memorandum.

9 Thus, Mr. Roaque requests this Court correct the judgment to add Mr. Roaque's
10 second then-pending state case—Nevada State Case # C329227-5. As Mr. Roaque was in
11 primary state custody when the government filed the indictment in this case, he was arrested
12 and brought into federal custody pursuant to a Writ of Habeas Corpus ad Prosequendum on
13 July 25, 2018.¹⁰ Without the requested correction, there is a concern Mr. Roaque will stop
14 receiving credit towards his federal sentence when he completes his sentence for Nevada State
15 Case # C326055, which was set to expire in July 2021; and his federal sentence will not begin
16 to run again until he completes the sentence for Nevada State Case #C329227-5, which is set
17 to expire in 2028.¹¹

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20 ⁶ ECF No. 81 at 3.

21 ⁷ ECF No. 85.

22 ⁸ ECF No. 110 at 10, 21.

23 ⁹ *Id.* Undersigned counsel confirmed with Mr. Roaque's prior counsel that the reference
24 to only one of Mr. Roaque's state cases was inadvertent and that the original intent of the
25 parties' plea agreement and Mr. Roaque's sentencing memorandum had not changed.

26 ¹⁰ *See* PSR at 1.

¹¹ According to the Nevada Department of Corrections website, Mr. Roaque's sentence
for Nevada State Case #C326055 expired on July 27, 2021. *See* (Joseph Roaque, ID 1038251)
<https://ofdsearch.doc.nv.gov/>.

1 **III. CONCLUSION**

2 For the foregoing reasons, Mr. Roaque requests this Court correct the judgment to
3 reflect Mr. Roaque's sentence as the following:

4 One hundred, forty (140) months as to Count One; to run
5 concurrent with Nevada State case #C326055 and case
6 #C329227-5.

6 DATED this 4th day of April 2022.

7 RENE L. VALLADARES
8 Federal Public Defender


9 By: /s/ Katherine Tanaka

10 KATHERINE TANAKA
11 Assistant Federal Public Defender
12 Attorney for JOSEPH ROAQUE

13
14 **ORDER**

15
16 IT IS SO ORDERED.

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18 DATED this 5th day of April, 2022.

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21 RICHARD F. BOULWARE, II
22 United States District Judge

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24
25 Undersigned counsel spoke to BOP counsel. Because Mr. Roaque is currently in
26 primary state custody, the BOP has not calculated his release date and will not have that date
until he is transferred to primary federal custody. Mr. Roaque is thus requesting this correction
in an abundance of caution.